

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AUGUST WILDMAN, et al., : 21-CV-04400(KAM)

Plaintiffs,

United States Courthouse
Brooklyn, New York

December 7, 2021
1:00 p.m.

DEUTSCHE BANK
AKTIENGESELLSCHAFT, et
al..

Defendants.

CAUSE FOR PRE-MI TELECONFERENCE

TELECONFERENCE
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT JUDGE

APP E A R A N C E S:

For the Plaintiffs: SPARACINO PLLC
1920 L Street, NW
Suite 535
Washington, DC 20036

BY: RYAN SPARACINO, ESQ.
ELI JOHNSON KAY-OLIPHANT, ESQ.

For Defendant
Deutsche Bank AG
and Deutsche Bank
Trust Company Americas: CAHILL GORDON & REINDEL LLP

BY: DAVID G. JANUSZEWSKI, ESQ.

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1 A P P E A R A N C E S: (Continued.)

2 For Defendant
3 Standard Chartered
4 Bank: SULLIVAN & CROMWELL LLP
125 Broad St
New York, NY 10004

5 BY: ANDREW FINN, ESQ.

6 For Defendant
7 Danske Bank A/S
8 and Danske Markets,
9 Inc: SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2948

10 BY: BRIAN THOMAS FRAWLEY, ESQ.

11 For Defendant
12 Placid NK Corp.: WHITE & CASE LLP
701 13th St, NW
Washington, DC 20005

13 BY: CLAIRE DELELLA, ESQ.
MICHAEL MAHAFFEY, ESQ.

14
15 Court Reporter: DENISE PARISI, RPR, CRR
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18 Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

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21 (All parties present via teleconference.)

22 THE COURT: Hello. Good afternoon.

23 This is Judge Matsumoto.

24 This is a pre-motion conference in the case Jonathan
25 L. Ashley, III, et al., versus Deutsche Bank, et al.

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1 I'm going to take the appearances starting with the
2 plaintiff, and I will just ask each counsel to remember to
3 identify himself or herself before you speak.

4 First let's get the appearance for the plaintiff,
5 please.

6 MR. SPARACINO: This is Ryan Sparacino, counsel for
7 the plaintiffs.

8 THE COURT: All right. Thank you.

9 Will you be the one speaking on their behalf today,
10 sir?

11 (Pause.)

12 THE COURTRoom DEPUTY: Sir?

13 THE COURT: Hello? Will you be speaking on their
14 behalf today, or will your co-counsel also be speaking?

15 MR. SPARACINO: I apologize, Your Honor. I didn't
16 know if Your Honor could hear me. I said yes, Your Honor.

17 THE COURT: All right. We didn't hear you.

18 Who is here for Deutsche Bank?

19 MR. JANUSZEWSKI: Good afternoon, Your Honor.

20 I'm David Januszewski from Cahill Gordon for
21 Deutsche Bank AG and Deutsche Bank Trust Company Americas.

22 THE COURT: Thank you.

23 All right. Next we have, Standard Chartered Bank.
24 Who's appearing for Standard Chartered, please?

25 MR. FINN: Good afternoon, Your Honor.

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1 Andrew Finn from Sullivan & Cromwell on behalf of
2 Standard Chartered.

3 THE COURT: Okay. Thank you.

4 Next we have Danske Bank.

5 MR. FRAWLEY: Good afternoon, Your Honor.

6 It's Brian Frawley from Sullivan & Cromwell for
7 Danske Bank and Danske Markets.

8 THE COURT: Is there any conflict with your firm's
9 representation of two of the defendants by any chance? I'm
10 assuming you checked.

11 MR. FRAWLEY: Your Honor, it's Brian Frawley.

12 We do not believe there is any conflict, and our
13 clients are aware of the representation.

14 THE COURT: All right. Thank you.

15 And who do we have for Placid NK, please?

16 MS. DELELLE: Good afternoon, Your Honor.

17 This is Claire Delelle on behalf of Placid, and with
18 me is an associate on my team, Michael Mahaffey, who will
19 present on Placid's behalf pursuant to Section 3, paragraph E
20 of Your Honor's chamber's practices.

21 THE COURT: All right. Thank you. I appreciate
22 your making that accommodation for an associate.

23 What I would like to do, again, is remind everybody
24 to identify yourself by name before you speak.

25 So I have a general question of the plaintiffs'

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1 counsel.

2 It seems to me -- I mean, I think this complaint is
3 a monster. I think, on its face almost, it violates Rule 8.
4 I'm wondering why you couldn't bring separate lawsuits against
5 each of the defendant's banks. You know, I understand your
6 theory about a syndicate becoming part of a money
7 laundering -- you know, having associations with many money
8 launderers and, you know, doing business with the various
9 defendants, but you are not alleging that every defendant is
10 allegedly responsible for aiding and abetting each of the
11 alleged acts that injured your clients, are you,
12 Mr. Sparacino?

13 MR. SPARACINO: Plaintiffs are alleging that each
14 defendant aided and abetted both the terrorist campaign --
15 (Teleconference interruption.) -- they're the group -- the
16 persons that committed the acts -- (Teleconference
17 interruption.) -- under JASTA, under the secondary liability
18 for aiding and abetting, plaintiffs must allege and prove that
19 the defendant aided the person who committed the attack, and
20 we believe we've done that here.

21 THE COURT: Well, that's not the point what you
22 believe. My point is whether -- you're alleging that each of
23 the four bank defendants aided and abetted each of the
24 injuries against each of your clients; is that what you're
25 telling me?

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1 MR. SPARACINO: In the complaint, each defendant,
2 among other things -- (Teleconference interruption.) -- money
3 laundering organization while it was the world's --
4 (Teleconference interruption.) -- Laundering --

5 THE COURT: You are breaking up. You are breaking
6 up.

7 Do you have a better phone line to speak on?

8 MR. SPARACINO: I apologize. Your Honor, I
9 apologize. Is that better? I don't have an explanation for
10 my phone service. Am I coming through better now for Your
11 Honor?

12 THE COURT: Yes, you are. I was losing every half
13 word.

14 All right. So I just wanted to understand because,
15 honestly, I think that it becomes very difficult to --
16 especially in terms of contemplating the various defenses that
17 the defendants had raised, including personal jurisdiction,
18 failure to state a claim, imposition pleading on various
19 points like general awareness, substantial assistance,
20 et cetera. I'm just wondering if there's a neat and cleaner
21 way for you to have presented your claims; and if you tell me
22 no, I accept that. But let me just say this: There are a lot
23 of entities and names floating around in this complaint that
24 really don't seem to have direct connection to any of the
25 defendants or their claims or any of the alleged acts for

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1 which you seek compensation, and I'm just wondering if your
2 obligation to comply with Rule 8 was taken into consideration
3 when you drafted this complaint.

4 MR. SPARACINO: I hear you; I hear Your Honor loud
5 and clear. We were very conscious of our ruling obligations
6 when we drafted the complaint. We -- (Teleconference
7 interruption.) -- in a landscape in which it seems like no
8 matter how detailed anti-terror -- (Teleconference
9 interruption.) -- complaint is, the defense attorney hasn't
10 alleged with precision enough --

11 THE COURT: The Circuit has given us some guidance
12 on that -- I'm well aware -- but let me ask you this: I'm not
13 interested in your proposal to have them spend the time and
14 effort and their client's funds to draft a motion to dismiss
15 only to have you then come and amend your complaint. I would
16 rather you do that now before any briefing occurs so that I
17 can get your best iteration of the facts that you believe
18 support each of your client's claims, and then I can assess
19 whether those allegations are sufficient to state a claim
20 against each of the defendants; so I would like for you to do
21 that first, and I would like to find out how much time you
22 need to do that.

23 MR. SPARACINO: (Teleconference interruption.) --
24 contemplated, and I believe we proposed this to Your Honor,
25 that the defendant's original motion would be filed in January

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1 and --

2 THE COURT: No. Sir, sir, sir, you are missing the
3 point. I'm saying amend your complaint before they spend the
4 time and money drafting a motion to dismiss.

5 MR. SPARACINO: I was explaining the calendar. I
6 was trying to explain my -- the context in my answer, which is
7 to say that I believe that we can do so along the same general
8 calendar that we've already -- (Teleconference interruption.)
9 -- is what I was trying to say.

10 THE COURT: What, you could amend your complaint
11 along the same general calendar, which is? You propose that
12 the defense briefs would come in January 21, 2022; your
13 opposition would be filed March 18th -- and, by the way,
14 nobody files anything until the motion is fully briefed, and
15 then the replies would be -- and the fully briefed motion
16 would be filed April 15th. But then you state that you want
17 to amend your complaint upon review of the motion, and I'm
18 saying that that's not really fair to the defendants who will
19 have spent time and effort briefing a motion where I'm giving
20 you an opportunity now to amend your complaint without motion
21 practice, assuming the defendants agree. And then we can
22 schedule motion practice against the complaint if defendants
23 still believe that you are pleading a deficient --
24 (Teleconference interruption.) -- as far as the allegations
25 against your clients.

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1 MR. SPARACINO: What I was proposing was that we be
2 permitted to file our amended complaint on the date that we
3 had currently reserved for when our opposition was due. That
4 was what I was trying to articulate.

5 THE COURT: So in March rather than January? Why do
6 you need that much time?

7 MR. SPARACINO: I apologize. I had understood that
8 that would be in February. I don't believe we need until
9 March. I believe that we would need until early February
10 partly because we expect we will have additional clients who
11 will join the case, and there are separate processes we have
12 for that, and partly because we take Your Honor's statement --
13 (Teleconference interruption.) -- during today's hearing to
14 heart, and we would anticipate spending a lot of time to
15 comport the complaint to what Your Honor had described.

16 THE COURT: I'm happy to hear from any of the
17 defense counsel. I would just ask that you identify yourself.
18 Actually, maybe we should do this in order hearing first from
19 Deutsche Bank.

20 MR. JANUSZEWSKI: Yes, Your Honor, David Januszewski
21 from Cahill.

22 We are just supportive of the course that Your Honor
23 has suggested and would have made some of the points that you
24 eluded to in terms of the burden and expense on our clients to
25 respond to this only to have an amendment where they clearly

1 know what the issues are and the deficiencies we assert, so we
2 support the idea of having them amend first.

3 THE COURT: All right.

4 What about counsel for Standard Chartered Bank?

5 Mr. Finn?

6 MR. FINN: Yes, Your Honor, it's Andrew Finn for
7 Standard Chartered.

8 Standard Chartered as well would have no objection
9 to allowing the plaintiffs to amend and thereafter trying to
10 agree on a briefing schedule for motions to dismiss.

11 Obviously, some of our clients have personal jurisdiction
12 objections that we wouldn't be waiving by agreeing to allow an
13 amendment at this point, but we have no objection to
14 proceeding in this way.

15 THE COURT: All right.

16 And we also have Mr. Frawley from Danske Bank.

17 MR. FRAWLEY: Yes, Your Honor. Brian Frawley.

18 Thank you.

19 Danske Bank has no objection to proceeding this way,
20 but to be clear, if the plaintiffs amend now, it will be our
21 position that they don't get to amend again following the
22 motion to dismiss.

23 THE COURT: Well, we will talk about that in a
24 second. I actually agree with you because this is their
25 opportunity to state the best iteration of the factual

1 allegations that support their claims, and I want to give them
2 a full opportunity. I'm reluctant to give the plaintiff until
3 February, frankly, but if it will give me their best iteration
4 of all the facts that support their claims, I'm happy to give
5 them that time, but they will not be given leave to replead.

6 Let me ask Placid's counsel.

7 Mr. Mahaffey, are you going to speak on behalf of
8 Placid NK?

9 MR. MAHAFFEY: Yes, Your Honor. This is Michael
10 Mahaffey.

11 Thank you.

12 And we fully support Your Honor's proposal, and we
13 also agree with Your Honor that February is a pretty extended
14 time frame. Our client's preference is to move this forward
15 as quickly as possible. This complaint was filed in August.
16 We filed our letter in October pointing out the deficiencies
17 in the complaint, so of course we want to help the Court make
18 this a smooth process, and we are happy to be on a uniform
19 briefing schedule, but we would be remiss if we didn't note
20 that our client would, as Your Honor said, like to move this
21 forward a little more quickly than a February amendment.

22 THE COURT: Well, I will ask plaintiffs' counsel.

23 Mr. Sparacino, can you file an amended complaint any
24 earlier than February, because this case will have been filed
25 for -- you know, this complaint was filed in August of 2021.

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1 It just seems odd to me that you need six months to file an
2 amended complaint from the date of the first filing to
3 February. Can you do it any sooner is my bottom line
4 question.

5 MR. SPARACINO: I think potentially if we -- I think
6 we could probably do it as late as maybe the last week in
7 January, but to make us do it sooner than that, candidly,
8 would -- we, kind of, assumed, I guess, that we would, you
9 know, not, in any scenario, have to have this on file before,
10 you know -- (Teleconference interruption.) --

11 THE COURT: Before what? I'm sorry, sir. Before
12 what? You cut out.

13 MR. SPARACINO: Just before the end of January. You
14 know, we have -- we are in the process of, among other things,
15 negotiating with co-counsel who expect to come on board and
16 serve as lead counsel, to likely include additional clients in
17 the complaint, and a substantial amount over the holidays. We
18 will work as fast as we possibly can. I'm confident that we
19 could make an end-of-January deadline.

20 One alternative, I suppose, is we could probably
21 make a -- we could easily make an end-of-January deadline,
22 assuming the parties are amenable to us including additional
23 plaintiffs just as a related case, which we designate related,
24 and agree by stipulation that whatever Your Honor's rulings in
25 this case bind that case as well. That should be an efficient

1 way to ensure that we have no problem meeting that
2 end-of-January deadline without any -- to address Placid's
3 concerns.

4 THE COURT: I can't speak for them.

5 Does somebody on the defense side want to be heard?

6 MR. FRAWLEY: Your Honor, it's Brian Frawley from
7 Sullivan & Cromwell for Danske Bank.

8 I can't really agree in the abstract that some
9 lawsuit I haven't seen yet is going to be duplicative and
10 overlapping with the current lawsuit, but, you know, the rules
11 provide methods for the plaintiffs to add parties to this case
12 through amendments or otherwise, and we will be accommodating
13 to any request to do so. This is the first we're hearing that
14 there's going to be a different lawsuit filed that I haven't
15 seen yet, so we'll cooperate. We agree with Placid's counsel
16 that, you know, this lawsuit is, in some ways, defamatory
17 towards our client accusing them of being terrorists, and we
18 want to move this forward.

19 THE COURT: All right.

20 So am I hearing you say that you would prefer to
21 have the plaintiffs amend, joining all other parties that they
22 plan to join, and give them a little bit more time until
23 February instead of late January? Does anybody object to that
24 plan? If we're going to move forward through motion practice
25 with four different defendant groups, I would rather have a

1 complaint that really represents the -- (Teleconference
2 interruption.) -- statement of facts and assess the deficiency
3 of the claims on that.

4 Does anyone object, on the defense side, to giving
5 plaintiffs' counsel until early February, as he proposed
6 initially?

7 For Deutsche Bank.

8 MR. JANUSZEWSKI: David Januszewski from Cahill.

9 We would support that. We would support the idea of
10 taking him at his word as to what he needs to produce his true
11 final product, and if that's the first week of February, we
12 would support that.

13 THE COURT: All right. If any other defendant wants
14 to be heard, I will hear you, but if I don't hear anything, I
15 will assume that the February date is satisfactory to
16 everybody.

17 (Pause.)

18 THE COURT: All right.

19 So, Mr. Sparacino, let's set a date in February when
20 you are going to file your amended complaint, please, and this
21 will include those additional plaintiffs that you are talking
22 about. Hopefully you'll straighten out any co-counsel issues
23 that you are currently engrossed in and we can get this
24 rolling. So when in February, sir?

25 MR. SPARACINO: I propose, perhaps, Wednesday,

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1 February -- Tuesday, February 8th. That would give us
2 essentially just the first week.

3 THE COURT: All right.

4 MR. KAY-OLIPHANT: Your Honor, this is Eli
5 Kay-Oliphant.

6 THE COURT: I'm sorry, who's speaking?

7 MR. KAY-OLIPHANT: This is Eli Kay-Oliphant from
8 Sparacino PLLC.

9 I think my partner, Ryan Sparacino, may have
10 overlooked a deadline that we have literally three days before
11 that in another case, so I would suggest that perhaps a week
12 further from what he just described.

13 MR. SPARACINO: He's right about that. The 15th
14 would be much better, that's correct.

15 THE COURT: All right. Now we're not in early
16 February, we're in mid-February, but that's it. All right?
17 February 15th.

18 What I would like to do -- I'm assuming it's going
19 to be as bad, or maybe worse than what we've got now, in terms
20 of length and number of paragraphs. I would really, really
21 hope, Mr. Sparacino and Mr. Kay-Oliphant, that you would try
22 very hard to shorten the allegations, focus on the factual
23 deficiencies that are identified for you, add those facts,
24 take out everything that is not absolutely relevant and
25 material to your claim, and do your best to state your claims

1 for all your clients, and I would like to give the defendants
2 some time to read your amended pleading and decide how they
3 want to proceed. I mean, maybe some of your claims can be
4 dropped if you think about whether there's a lack of personal
5 jurisdiction, or you have some issues with not being able to
6 state facts against certain of the defendants that are
7 necessary to state a claim. I hope you would give that
8 careful thought.

9 But let me ask defense counsel -- you may all have
10 different views about this, but when would you like to advise
11 the Court as to how you intend to proceed? I don't think we
12 need another pre-motion conference, but if you do decide to
13 proceed with your motions, I would like to have some mutually
14 agreeable briefing schedule, which, by the way, I think was a
15 little bit lengthy. I have never seen a briefing schedule
16 with that generous of a time frame, but how much time would
17 you need to make a decision as to how you are going to
18 proceed, assuming that plaintiff's amended complaint is
19 hopefully slightly shorter than what we've got now.

20 MR. FRAWLEY: Your Honor, it's Brian Frawley from
21 Sullivan & Cromwell on behalf of the Danske Bank defendants.

22 I think this is true for some of the other defendant
23 groups as well, but the allegations against Danske Bank all
24 derive from a publicly-issued report about issues that the
25 bank experienced ending in 2016, so I frankly don't expect the

1 Danske Bank specific allegations to change very much in any
2 complaint. They are all public records. I would suggest that
3 we could advise the Court within a week of receiving that
4 complaint of our intentions with respect to motions and
5 propose a schedule that we will certainly agree would be --
6 (Teleconference interruption.) -- which was extended due to
7 some holiday and competing scheduling issues, but I would
8 anticipate moving against that complaint within 30 days.

9 THE COURT: All right. Is that true for all the
10 defendants as well?

11 MR. JANUSZEWSKI: That would be fine for Deutshce
12 Bank, Your Honor.

13 David Januszewski for Deutsche Bank.

14 MR. MAHAFFEY: This is Michael Mahaffey for Placid
15 Express, and that works for us as well.

16 MR. FINN: And Andrew Finn for Standard Chartered.
17 Also fine for Standard Chartered.

18 THE COURT: All right. So you will be moving within
19 30 days against -- in all likelihood -- against the amended
20 complaint.

21 All right. And that would bring us to mid-March --
22 let's say March 18th. By March 18th; is that all right?

23 MR. FRAWLEY: Brian Frawley.

24 It's fine for Danske Bank.

25 THE COURT: All right. If any defense lawyer thinks

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1 March 18th is too soon, let me know now, please.

2 (Pause.)

3 THE COURT: All right. So now that plaintiffs'
4 counsel is in the position of having to defend against four
5 motions, so I'm happy to give him a little more latitude to
6 respond.

7 How's May 13th, Mr. Sparacino?

8 MR. SPARACINO: Your Honor, it is also my birthday,
9 full disclosure. That's a wonderful date.

10 THE COURT: All right. You are fine with that? All
11 right. I would hate to have you --

12 MR. SPARACINO: No problem. No problem.

13 THE COURT: Okay. All right. So you will serve
14 your oppositions by May 13th.

15 And defendants' reply, what would you need for that?
16 Does somebody want to speak about that?

17 MR. FRAWLEY: It's Brian Frawley from Sullivan &
18 Cromwell.

19 I would think that three weeks would be sufficient
20 at least from Danske Bank's perspective.

21 THE COURT: Does anyone have an issue with three
22 weeks on the defense side?

23 MR. MAHAFFEY: Your Honor, this is Mike Mahaffey
24 with Placid Express.

25 We could do sooner, we could do two weeks, but three

1 weeks is fine to stay on a uniform schedule.

2 THE COURT: Counsel, once again -- I'm assuming no
3 other defendant has an issue with the three-week reply after
4 plaintiff's opposition; is that correct?

5 MR. JANUSZEWSKI: That's fine for Deutsche Bank,
6 Your Honor.

7 THE COURT: Okay. Thank you.

8 Counsel, please consult my motion practices. I
9 would like you to file the fully briefed motion on June 3rd,
10 not before. You may provide me with two courtesy copies in
11 advance when you serve your papers on your adversary.

12 And, Mr. Sparacino, when you file your amended
13 complaint, please provide two copies of that to chambers. All
14 right? I'm just, kind of, in shock about the amount of paper
15 that this case -- even to print the docket sheet was 114
16 pages. It was kind of mind-boggling. We are not interested
17 in wasting a lot of paper, but I would like you to deliver the
18 courtesy copies of your complaint to our chambers once it's
19 filed on February 15th, if you would, please.

20 (Pause.)

21 THE COURT: Hello?

22 MR. SPARACINO: I apologize. I am going to get a
23 better phone service. I said yes, Your Honor.

24 THE COURT: Okay. Am I the only one not hearing
25 Mr. Sparacino?

1 MR. JANUSZEWSKI: No. We all have the same problem.

2 THE COURT: All right. Very good.

3 MR. SPARACINO: I apologize for my -- I apologize.

4 THE COURT: Okay.

5 MR. FRAWLEY: Your Honor, it's Brian Frawley.

6 If it's of any benefit to the Court, I think the
7 parties would all be happy to amend the caption of this so
8 there aren't 800 parties in it and alleviate any issues with
9 the pages that that creates.

10 THE COURT: I think we are just going to, in the
11 future, be selective about what we print. I think obviously
12 in the amended complaint, all the plaintiffs have to be named
13 and identified, but yet we can -- if it's all right with
14 Mr. Sparacino -- agree that Jonathan L. Ashley, III, will be
15 the lead plaintiff, and it will be "et al."

16 Is that all right with you, sir?

17 MR. SPARACINO: Yes. The lead plaintiff, as we
18 filed it, was Ms. August Wildman, but there was something on
19 ECF that switched that around. We are happy to restyle it how
20 Your Honor prefers.

21 THE COURT: Well, any plaintiff you want to name as
22 the lead or the first named plaintiff with "et al.," that's
23 fine. Probably our ECF system got a little spooked by this
24 complaint and how to process it, so whatever plaintiff you
25 want to name in the shortened caption, it's fine with me, and

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1 you will name all the other defendants; and the amended
2 complaint will identify each of the plaintiffs so that we can
3 understand which plaintiffs are affiliated with one another
4 and are seeking relief that arises from a particular injury or
5 death.

6 Is there anything else I need to address right now?

7 (Pause.)

8 THE COURT: No?

9 All right. Thank you, Counsel. I hope everybody
10 stays safe, and enjoy your holidays.

11 (Matter concluded.)

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13 * * * * *

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15 I certify that the foregoing is a correct transcript from the
record of proceedings in the above-entitled matter.

16

17 /s/ Denise Parisi

December 16, 2021

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DENISE PARISI

DATE

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